

REMARKS

The Examiner's action dated October 16, 2003, has been received, and its contents carefully noted.

The finality of the restriction requirement is noted. However, it is necessary, in this case, to again address the impropriety of the requirement. Firstly, as noted in the first response to the restriction requirement, such requirements are based on the invention as claimed and claim 1 is explicitly directed to a device for supplying coating products. Whether or not such a device could be used for supplying cleaning products, the fact remains that claim 1 is expressly limited to the supplying of coating products.

It is clear that operation of the device in claim 1 would involve the method of claim 7 and, conversely, practice of the method defined in claim 7 would require the device of claim 1. Therefore, if this restriction requirement were proper, it would mean that one patent could never contain both device and method claims, and this is clearly not the rule.

Adherence to the restriction requirement will mean that applicant will have the possibility of obtaining two separately assignable patents. If each patent were assigned to a different company, then a potential infringer could be

harassed by the two different assignees. In the scenario described above, if the restriction requirement is maintained, this is precisely the situation that could occur. In fact, the main reason why a terminal disclaimer must include a provision that both patents will remain commonly owned is to avoid such a situation.

In order to advance matters, there has been presented a new claim 13 that is clearly a linking claim, as explained in MPEP 806.05(d). This claim must be examined with the elected invention.

The rejection of claim 7 as anticipated by Brown is respectfully traversed for the reason that the applied reference does not disclose the method defined in claim 7, either as originally presented or as now amended.

Claim 7 is directed to a method that involves displacing a principal tank containing a coating product to the vicinity of a secondary tank, transferring coating product from the principal tank to the secondary tank and supplying the atomizer with coating products from the secondary tank. Although claim 7 originally employed the term "conducting", it is clear from the entirety of the recitation: "conducting at least one principal tank...to the vicinity of at least one secondary tank..." constituted a recitation of a displacement

operation, since this is the only possible interpretation of "conducting", based on the present specification. Replacement of "conducting" by "displacing" is simply for the purpose of eliminating any possible uncertainty and presenting language that is more consistent with that utilized in claim 1. The additional amendment to specify that the step of transferring is carried out after the step of displacing simply serves to provide improved clarity, without altering the scope of the claim.

The applied reference does not disclose any operation of conducting, or displacing, one tank to the vicinity of another tank. The explanation of the rejection does not include any assertion that the reference provides a disclosure of this feature. The elements that the Examiner identifies as a second tank are constituted by a sightglass 2a and a filter 14. Aside from the fact that neither of these elements can properly be considered to constitute a tank, it is clear that the operation of the apparatus disclosed in this reference does not include conducting, or displacing, a principal tank, e.g. reservoir 2, to the vicinity of any other component; simply stated, reservoir 2 is stationary relative to all of the other components.

Accordingly claim 1 clearly distinguishes over the applied reference by its recitation of "displacing at least one principal tank...up to the vicinity of at least one secondary tank" so that the rejection under 35 USC 102 must be withdrawn.

It is also noted that added claim 13 clearly distinguishes over the disclosure of the applied reference, at least by its recitation of means for "displacing at least one principal tank...up to the vicinity of at least one secondary tank."

Finally, it must be pointed out that claim 1 distinguishes over the applied reference at least by its recitation of "means for displacing said principal tank up to the vicinity of said secondary tanks.


Accordingly, it is requested that the prior art rejections and the restriction requirement be reconsidered and withdrawn, that all of the claims be examined on the merits and allowed and that the application be found in allowable condition.

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If the above amendment should not now place the application in condition for allowance, the Examiner is invited to call undersigned counsel to resolve any remaining issues.

Respectfully submitted,

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